

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY A. DENSTON,	§
	§ No. 560, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9905011124
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 13, 2009

Decided: March 25, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 25th day of March 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Gregory A. Denston, filed an appeal from the Superior Court's October 20, 2008 order denying his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In June 1999, Denston was indicted on charges of Attempted Murder in the First Degree and two counts of Criminal Solicitation in the First Degree. In September 2001, pursuant to a plea bargain with the State, Denston pleaded guilty to two counts of Criminal Solicitation in the First

Degree. The charge of Attempted Murder in the First Degree was dismissed. Denston was sentenced to a total of ten years incarceration at Level V, without the benefit of good time.<sup>1</sup>

(3) In this appeal, Denston claims that recorded conversations in which he solicited an undercover policeman to kill his former wife should have been suppressed and, therefore, the Superior Court abused its discretion when it denied his fourth motion for postconviction relief.

(4) The record reflects that Denston's fourth postconviction motion repeats the claims made in his third postconviction motion, which the Superior Court previously denied. As such, Denston's claims are procedurally barred as formerly adjudicated.<sup>2</sup> Moreover, Denston has failed to overcome the procedural bar by demonstrating that reconsideration of the claims is warranted in the interest of justice.<sup>3</sup> We, therefore, conclude that there was no abuse of discretion on the part of the Superior Court in denying Denston's motion and that the judgment of the Superior Court must be affirmed.

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<sup>1</sup> Del. Code Ann. tit. 11, § 4204(k). The record reflects that, at the time of his criminal solicitation convictions, Denston already was serving a total of thirty years incarceration at Level V on convictions of attempted murder and possession of a deadly weapon during the commission of a felony for attacking his former wife with a baseball bat.

<sup>2</sup> Super. Ct. Crim. R. 61(i) (4).

<sup>3</sup> Id. In the absence of any evidence of a miscarriage of justice pursuant to Superior Court Criminal Rule 61(i) (5), Denston's claims also are barred pursuant to Rules 61(i) (1), (2) and (3).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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